COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF:	)	
	)	CONSENT ORDER
DEUTSCHE BANK SECURITIES INC. (CDO Transactions),	)	
	)	Docket No. 2012-0020
RESPONDENT.	)	

I. INTRODUCTION

This Consent Order ("Order") is entered into by the Massachusetts Securities Division ("Division") and Deutsche Bank Securities Inc. ("DBSI"), a subsidiary of Deutsche Bank Aktiengesellschaft, in connection with the Division's investigation into DBSI's collateralized debt obligation ("CDO")-related practices (the "Proceedings").

On March 13, 2013, DBSI submitted an Offer of Settlement ("Offer") to the Division for the purpose of disposing the allegations set forth in the Offer. DBSI hereby admits to the Statements of Fact as set forth in Section VII, but neither admits nor denies the Summary and Violations of Law set out in Sections II and VIII, and consents solely for the purpose of these Proceedings, to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the claims brought hereby with prejudice.

II. SUMMARY

At the height of the U.S. CDO market in 2006, more than $520 billion of CDOs were issued.[1] In 2007, investment banks generated over $480 billion of CDOs.[2] DBSI underwrote

[1] Source: 10/15/2010 "Global CDO Issuance," Securities Industry and Financial Markets Association, http://www.sifma.org/research/statistics.aspx (cited in the April 13, 2011 Report of the United States Senate,

approximately $32.2 billion of CDOs between 2004 and 2008.[3] According to analysts, in 2006 and 2007, DBSI ranked fourth in global CDO issuances behind Merrill Lynch, JP Morgan Chase, and Citigroup.[4]

The Division conducted an investigation into DBSI's failure to disclose conflicts of interest arising from its various roles in proposing the structure for, co-investing in, and serving as the structurer for, a $1.56 billion hybrid CDO named Carina CDO, Ltd. ("Carina"). In the fall of 2005, a Managing Director in the Special Situations Group ("DBSI SSG"), a proprietary trading unit of DBSI, proposed that DBSI SSG and a hedge fund, Magnetar Capital LLC ("Magnetar"), co-invest in and purchase credit default swap ("CDS") protection on CDOs with certain structural features. In the end, DBSI SSG and Magnetar co-invested in at least six different CDOs that contained these structural features, with a combined notional value of over $10 billion.

During his on-the-record before the Enforcement Section, a DBSI SSG Managing Director testified to developing a CDO proposal ("CDO Proposal") in the fall of 2005. As a part of the CDO Proposal, DBSI SSG's Managing Director created a model CDO structure with no cash diversion triggers to limit cash flows from being redirected to higher rated tranches due to deteriorating collateral and certain credit events. The CDO Proposal also included the purchase of credit default swap ("CDS") protection referencing CDOs whose performance was expected to be similar to the performance of the CDO in which DBSI SSG and Magnetar bought equity.

To effectuate the CDO Proposal, DBSI SSG contacted Magnetar to co-invest in the equity tranches of CDOs. In an e-mail to Magnetar, DBSI SSG's Managing Director stated that

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Permanent Subcommittee on Investigations, entitled *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* ("PSI Report") at 334.
[2] *Id.*
[3] PSI Report at 335 n.1267.
[4] *Id.* at 335.

if single A assets would be in "danger" in a bad economic environment, then BBB subprime assets would be "toast."

With regard to one of the six CDOs in which DBSI SSG and Magnetar co-invested—Carina—DBSI's CDO Group agreed to structure, underwrite, and market Carina to investors. Although DBSI's CDO Group declined DBSI SSG's request to structure a CDO named Orion 2006-1, Ltd. ("Orion 2006"), DBSI SSG's Managing Director again approached a DBSI CDO Group Managing Director about the potential for structuring a second CDO. After some deliberation, DBSI's CDO Group agreed to structure the next CDO deal in which DBSI SSG co-invested. Once DBSI's CDO Group confirmed its interest, DBSI SSG's Managing Director e-mailed a DBSI CDO Group Managing Director and DBSI's Global Head copies of the Orion 2006-1 term sheet and offering circular. The significance of these e-mails is that DBSI SSG's Managing Director was providing the DBSI CDO Group's Managing Director and DBSI's Global CDO Head with a detailed roadmap as to how he wanted Carina to be structured. When asked why DBSI's CDO Group agreed to structure Carina, a DBSI SSG Managing Director testified that DBSI's CDO Group was: "willing to work under the structure we wanted to invest."

After Magnetar signed on as a co-investor, and DBSI's CDO Group agreed to serve as the structurer, DBSI SSG further expected to be involved in selecting Carina's collateral manager. In numerous follow-up e-mails, DBSI SSG, DBSI's CDO Group, and Magnetar had a series of discussions with a prospective collateral manager concerning Carina's proposed terms. However, after discussions reached an impasse, Magnetar called for the collateral manager to be taken out of the discussion. In June of 2006, at the request of the DBSI CDO Group, State Street Global Advisors ("State Street") agreed to act as the collateral manager of Carina.

In retaining State Street, DBSI's CDO Group entered into separate bilateral agreements with State Street and Magnetar. With State Street in the fold, State Street agreed to provide DBSI SSG and Magnetar with lists of assets slated for inclusion in Carina. Asset lists allowed DBSI SSG and Magnetar to match their purchases of CDS and to review collateral selection. In one instance, State Street selected a small business loan as collateral, which did not meet the collateral eligibility criteria in the portfolio parameters, and a DBSI SSG Associate urged a Magnetar Principal to express his displeasure to State Street. Magnetar Principal then complained to State Street that the small business loan could not be included in Carina without either DBSI SSG or Magnetar's prior approval. After DBSI SSG's Associate informed DBSI SSG's Managing Director of the Magnetar Principal's complaint to State Street, the Managing Director responded: "I think it reinforces that this is not just sponsoring a CDO, but really a. highly structured separate account mandate. I think DB and SSGA may be bothered by that, but it is the nature of the arrangement . . . ." Following the complaint, DBSI's Director of CDO Structuring apologized: "My fault on this . . . I thought I had forwarded to you pre-trade . . . ."

Turning to DBSI's marketing efforts in Carina, DBSI either used or created numerous kinds of marketing materials in connection with its discussions with prospective investors. However, nowhere in Carina's term sheet, offering circular, or in any of the investor presentations, was there a single reference to DBSI SSG or Magnetar relating to conflicts of interest that arose from DBSI's decision to structure, underwrite, market, and sell Carina. Further, there is not a single reference in Carina's marketing materials to DBSI SSG or Magnetar's role as the sponsors of Carina; their involvement regarding the size, structure, and portfolio of Carina; or their communications with DBSI's CDO Group concerning Carina.

Despite their knowledge of DBSI SSG's involvement, DBSI's CDO Group actively marketed Carina to investors in Asia. When one employee within DBSI's Asia Group asked for an explanation on the absence of cash diversion triggers in Carina, a DBSI CDO structurer asked: "What's [Magnetar Principal's] cell number?" In another string of e-mails relating to DBSI's marketing efforts in Carina, a vice president in the CDO Syndication Group stated that she had wood to chop on Carina and that she would be speaking at an upcoming meeting to market the Carina deal. The vice president also noted that one investor had expressed interest in investing in Carina was "looking but could be out. Will get more feedback tomorrow. They do not like Magnetar shorts the BBBs," to which another DBSI employee responded: "Why does [prospective investor] know that Magnetar is shorting BBBs?"

Despite DBSI CDO Group's knowledge of DBSI SSG's and Magnetar's involvement in the determination of Carina's structural features, the Enforcement Section asserts that the CDO Group helped conceal DBSI SSG and Magnetar's involvement in Carina because of DBSI SSG Managing Director's concern that: "some random Asian investor views these deals as Magnetar exposure, even though they don't know who Magnetar is . . . ."

In less than one year, rating agencies downgraded Carina's notes to junk status, resulting in substantial losses to investors.

The Division asserts that DBSI, in its capacity as a Massachusetts-registered broker-dealer, engaged in dishonest or unethical conduct and failed to supervise its employees because its employees knew of, but failed to disclose conflicts of interest that arose from (i) DBSI's involvement in structuring, underwriting, marketing, and selling Carina; and (ii) DBSI SSG's intention to purchase CDS protection referencing other CDOs whose performance was expected

to be similar to the performance of Carina. Unless DBSI had disclosed these conflicts of interest, investors could not have known of them and would not have invested in Carina.

III. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth of Massachusetts ("Commonwealth") with jurisdiction over matters relating to securities as provided for by the Massachusetts Uniform Securities Act ("Act"). The Act authorizes the Division to regulate: (1) the offer, sale and purchase of securities; (2) those entities and individuals offering and/or selling securities within the Commonwealth; and (3) those entities and individuals transacting business as broker-dealers, broker-dealer agents, investment advisers, or investment adviser representatives within the Commonwealth.

2. The Division instituted the Proceedings pursuant to the enforcement authority conferred upon it by Section 407A of the Act and MASS. GEN. LAWS ch. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all related rules and regulations promulgated thereunder.

3. This proceeding was brought in accordance with Sections 204 and 407A of the Act and its related Regulations. Specifically, those acts and practices constituting violations of the Act occurred in the Commonwealth.

IV. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate period of time between December 1, 2005 and November 30, 2007.

V. RESPONDENT

5. "DBSI" refers to Deutsche Bank Securities Inc., a subsidiary of Deutsche Bank Aktiengesellschaft, with a CRD Number of 2525, and a principal place of business at 60 Wall Street, New York, New York 10005.

6. DBSI is a registered broker-dealer, having been registered with the Commonwealth of Massachusetts since July 31, 1981.

VI. RELATED PARTIES

7. "Magnetar" refers to Magnetar Capital LLC, with a CRD Number of 135513, and a principal place of business at 1603 Orrington Avenue, Suite 990, Evanston, Illinois 60201, and an office located at 500 Park Avenue, New York, New York 10022.

8. "State Street" and "SSgA" refer to State Street Global Advisors, a division of State Street Bank and Trust Company, with a CRD Number of 143499, and a principal place of business at State Street Financial Center, One Lincoln Plaza, Boston, Massachusetts 02111.

VII. STATEMENT OF FACTS

A. *DBSI'S GLOBAL STANDING IN THE CDO MARKET*

9. According to the Securities Industry and Financial Markets Association ("SIFMA"), between 2004 and 2007 the U.S. CDO market issued over $1.4 trillion of CDOs in the United States. At its height, in 2006, the U.S. CDO market issued more than $520 billion of CDOs. In 2007, investment banks issued over $480 billion of CDOs. DBSI underwrote approximately $32.2 billion of CDOs between 2004 and 2008. According to analysts, in 2006 and 2007, DBSI ranked fourth in global CDO issuances behind Merrill Lynch, JP Morgan Chase, and Citigroup.

10. In 2005, DBSI SSG, a proprietary trading group designed to invest the firm's capital, agreed with a hedge fund named Magnetar to co-invest in and purchase CDS protection on CDOs with certain structural features.

11. During his on-the-record before the Enforcement Section, DBSI SSG's Managing Director testified to developing the CDO Proposal in the fall of 2005. As a part of the CDO Proposal, DBSI SSG's Managing Director created a model CDO structure with no cash diversion triggers to limit cash flows from being redirected to higher rated tranches due to deteriorating collateral and certain credit events.

12. The CDO Proposal also included the purchase of credit default swap ("CDS") protection referencing CDOs whose performance was expected to be similar to the performance of the CDO in which DBSI SSG and Magnetar bought equity.

13. To effectuate the CDO Proposal, DBSI SSG contacted Magnetar to co-invest in the equity tranches of CDOs. In an e-mail to Magnetar, DBSI SSG's Managing Director stated that if single A assets would be in "danger" in a bad economic environment, then BBB subprime assets would be "toast."

14. In the end, DBSI SSG and Magnetar co-invested in at least six different CDOs with a combined notional value of over $10 billion: Orion 2006-1, Orion 2006-2, Pyxis 2006-1, Octans II, Carina 2006-1, and Cetus 2006-3.

B. *DBSI'S GLOBAL CDO GROUP AND ITS ORGANIZATIONAL STRUCTURE*

15. In 2006, DBSI's Securitized Products Group included the North America CDO Group ("CDO Group") and DBS1 SSG, both of which fell under the managerial oversight of one Managing Director ("Global CDO Head").

16. In 2006, the CDO Group had two Managing Directors who co-headed the group. Together, the two Managing Directors of the CDO Group oversaw three smaller groups: (1) the CDO Structuring Group (New York); (2) the CDO Financial Modeling Group (New York); and (3) the CDO Syndication Group (New York).

17. In 2006, DBSI SSG had a Managing Director with managerial responsibility for the group. That Managing Director of DBSI SSG oversaw a group of associates responsible for a variety of proprietary investments, including investments in CDOs.

C. *DBSI SSG's CDO PROPOSAL*

18. On December 6, 2012, pursuant to a subpoena for on-the-record testimony, a DBSI SSG Managing Director confirmed that in the fall of 2005 he developed a CDO Proposal that involved investing in the equity of CDOs with certain structural features.

19. When asked to describe the CDO Proposal, the Managing Director explained: ". . . the key concept was the idea of investing in the equity of CDOs that did not have cash diversion triggers."

20. The DBSI SSG Managing Director further explained that CDOs with no cash diversion triggers were "desirable" to his "investment thesis." He stated: "If I'm the equity, if I don't have cash diversion triggers, I can with a high degree of predictability or reliability expect to get [back principal and interest payments] for some number of years, whereas when I deal with triggers, I have to invest less, but if there are credit events tomorrow, I might not get any cash flow."

21. On December, 18, 2012, pursuant to a subpoena for on-the-record testimony, a DBSI SSG Associate confirmed DBSI SSG's objective was to "effectively take triggers out of a structure and add a little bit more equity and subordination and . . . create a cash flow where you

could get most of your principal back within . . . call it four years, four to five years, with relatively low risk and it was [a] very forgiving cash flow profile; that was the early logic."

22. On January 11, 2006, DBSI SSG's Managing Director described another CDO investment strategy to Magnetar Principal: ". . . The idea is that we are long single-A and higher risk in highly correlated asset class. If single-As are in danger, BBBs must be toast, so the mezz class (PIKable A- tranched is probably the best for this purpose) off a deal backed by BBB subprime should be looking pretty bad. The cds market for CDOs is thinner than for home eq, but I think this is sort of a core short that we will likely leave on for the indefinite term . . . ."

23. Magnetar Principal responded: "I like it. Doing the trade on CDO makes sense if we can get it done. Would be great if the DB guys will help us . . . I'd love to get some hedge on ASAP, just to say we have a hedge. A portfolio of core shorts is key if we're going to run this thing like a pipeline. Let me know if I can do anything."

24. An e-mail from the DBSI SSG Managing Director later confirmed: ". . . I think you realize that the magnetar cdo strategy resulted from me looking for a partner on these types of deals . . . Yes, magnetar has taken it to a different level, but the initial catalyst . . . was me."

25. Another feature of the CDO Proposal was the negotiation of lower administrative fees for the CDO underwriters and collateral managers. This was accomplished, in part, because of the size of the CDOs.

26. During his on-the-record, the DBSI SSG Managing Director conceded that he and a Magnetar Principal met with "eight to ten firms" to discuss their willingness to underwrite a CDO that fit within their proposed CDO structure.

27. E-mails reveal that the DBSI SSG Managing Director and a Magnetar Principal also considered shorting higher rated tranches of CDOs. In one e-mail, the DBSI SSG Managing

Director stated: "From my perspective, the BBB vs A is an interesting trade, but a different one. I think the theme is the current trade is that even with high defaults, our risk is minimal since the excess cashflows given no triggers about repay our basis. Going higher in the capital structure changes that characteristic, unless BBBs get much cheaper than where they are today . . . However, if this is a view we want to express (that is asset losses are high enough (and probably very correlated) to hit BBBs, they are probably going higher to single-As), then I think the way to do it is a CDO^2 of BBBs and short either the mezz from that cdo^2 deal or single name single-As . . . ."

28. By October of 2006, DBSI SSG considered shorting AA rated tranches of CDOs as well. In an e-mail from the DBSI SSG Associate to his Managing Director, Associate stated: "[Magnetar Principal] has been shorting AA's as well. At somepoint we should really start thinking about shorting a lot of CDO AA's through BBBs and going long single names . . . ."

29. On October 22, 2006, the DBSI SSG Managing Director explained: "The piece that might be interesting about a gs deal is that we could short a bunch of cdo's to the vehicle. If the world of credit does well, we call the deal and cut the bleeding on the shorts. If the world is bad and credit events are occurring, the deal is forced to sell the cdo's (buy protection on the cds) in a bad environment, likely at very deep discounts, which would then come back to us on our cdo shorts. We haven't talked about it lately, but I am increasingly concerned that in a couple of years, liquidity on old cdo's will be atrocious and markets on bbb's could be incredibly wide since not clear who will be axed to buy protection on old deals. I see a lot of appeal in a deal that gives us a call in a good credit scenario, and a quick monetization of shorts in a bad scenario . . . ."

30. DBSI SSG and Magnetar were aware that other market participants knew of their CDO Proposal to invest in the equity of CDOs with certain structural features and to purchase CDS protection referencing CDOs whose performance was expected to be similar to the performance of the CDO in which DBSI SSG and Magnetar bought equity. In an e-mail dated January 10, 2007, a DBSI SSG Managing Director explained to a Magnetar Principal: ". . . I think it is now clear that a premium is being charged on the mezz of constellation deals, and now that there are some hedge funds perpetrating the same strategy, I think it should be considered to start using more innocuous names."

31. The Magnetar Principal replied, in part: "What sort of premium do u mean on const deals? No sure it would be very easy to hide our deals, we always know what deals tricadia is doing . . . ."

32. In response, the DBSI SSG Managing Director stated, in part: "I agree that it can be tough to hide, but tricadia is obvious since they are managing their deals. However, while magnetar involvement might be obvious to you, me, the dealers and people like tricadia and ms prop, the deal traits are not necessarily obvious to the marginal mezz buyer in japan, singapore, taiwan, germany, etc who is increasingly the critical link in the chain. My concern is that some random asian investor views these deals as 'magnetar exposure,' even though they don't know who magnetar is . . . Also, mezz investors, particularly the less sophisticated ones, will just pass on a deal if they have heard some disparaging remark on constellation deals (and people are making such comments because they either don't understand the strategy, are freaked out by size, or are jealous because they aren't doing it and instead talk about how they are going to pick up the pieces when magnetar blows up) or read some article in a trade rag with a negative bent . . . ."

33. During his on-the-record, the DBSI SSG Associate confirmed DBSI SSG's and Magnetar's "strategy evolved slightly over time in that we really tried to make the deals as . . . efficient as possible in that you could bring fees down both for the underwriter and the manager . . . which would make the deal much better off; and then with the advent of CDS on CDOs you could add a hedge on, call it triple Bs from CDOs as well, and create a cash flow profile when you combined the long equity and then the short . . . call it triple Bs but short the mezzanine where you'd have a return profile that was . . . in the high teens or close to 20 if there were no losses in the underlying assets and that would slope down to around breakeven at about 6 percent losses and then with the hedge it would go up after that, so it was really creating a cash flow profile where it was very, very hard to lose money so it was a very attractive—the strategy, when taken together, was a very attractive investment."

D. *DBSI SSG AND MAGNETAR INITIATE THEIR CDO PROPOSAL IN CARINA*

i. <u>DBSI SSG Approaches DBSI CDO Group Regarding Its CDO Proposal</u>

34. On or around March 27, 2006, e-mails show that a DBSI SSG Managing Director discussed with DBSI's CDO Group a proposal to underwrite DBSI SSG's and Magnetar's model CDO structure.

35. The DBSI SSG Managing Director testified that, for Carina, it was DBSI "who expressed an interest in working with Deutsche, SSG, and they introduced us to State Street and the transaction that became Carina. So we didn't seek out an underwriter to underwrite Carina . . . ."

36. On April 10, 2006, DBSI's CDO Group e-mailed a presentation to DBSI SSG. The presentation was based on DBSI SSG's model CDO structure (the "Presentation").

37. The Presentation contained written statements that DBSI SSG had agreed to a "50 / 50 arrangement [with Magnetar] with respect to all economics and commitments [in the CDOs.]"

38. The Presentation stated that DBSI SSG would have an "[a]ctive role in selecting and structuring transactions." In particular, the Presentation explained that DBSI SSG would participate in the creation of the CDO structure in order to "[c]reate stable, hedgeable cashflows through minimization of triggers and other structural features[.]" As confirmed in the Enforcement Section's on-the-records, the Presentation explained that the benefit of triggerless CDOs was that it allowed DBSI SSG and Magnetar to protect the return on their long investments "even under severe loss scenarios[.]"

39. The Presentation also evidenced a preference for certain synthetic assets, which allowed, among other things, for accelerated CDO ramping with a higher degree of correlation between DBSI SSG and Magnetar's long and short positions.

40. The Presentation further stated that DBSI SSG's proposed CDO structure would cause its "[e]quity cashflows [to] perform comparably to traditional deals in no / low loss scenarios and [to] significantly outperform moderate / high loss scenarios." One month later, on May 8, 2006, a DBSI CDO Group Managing Director provided an update to the Global CDO Head regarding his meeting with DBSI SSG, commenting that DBSI SSG and Magnetar were vetting other CDO underwriters willing to create the desired CDO.

41. The following morning, on May 9, 2006, the CDO Group Managing Director e-mailed a DBSI SSG Managing Director, stating: "I reflected on our conversation, and think Deutsche Bank CDO Group should underwrite the next CDO in which you invest equity. Can you please forward me the termsheet/other information on the Calyon Deal so we can put together a proposal. In addition if there is any other transaction in another asset class or a distinct structure you are considering could you forward me details so that we can make a proposal."

42. Eight minutes later, the DBSI SSG Managing Director replied to the CDO Group Managing Director: "[S]ounds great. I look forward to working together. I will talk to [a Magnetar Principal] and get him involved, maybe have him come down here later this week so that we can discuss managers."

43. Several minutes later, the DBSI SSG Managing Director sent another e-mail to the CDO Group Managing Director and the Global CDO Head with an attachment of the Orion 2006-1 term sheet ("Orion Term sheet") and preliminary offering circular ("Orion Offering Circular"). In his e-mail, the DBSI SSG Managing Director highlighted critical features of Orion 2006-1, including, but not limited to, the size, structure, and fees (*e.g.*, structuring, warehousing, intermediation, and placement fees) associated with the CDO.

44. On May 11, 2006, the DBSI SSG Managing Director updated a Magnetar Principal about the CDO Group's interest in underwriting their next CDO.

45. Also on May 11, 2006, the DBSI SSG Managing Director e-mailed a colleague reminding him that "we need to talk about how to deal with Magnetar now that [DBSI CDO Group] wants to do a deal. The main questions are how I interact with [a Managing Director of the CDO Group] when he is speaking to [the Magnetar Principal], since unlike with 3rd party dealers, I am not an unbiased investor here."

46. After the Enforcement Section asked the DBSI SSG Managing Director why the CDO Group agreed to underwrite the proposed CDO, the Managing Director testified: "I would say that they had a desire to underwrite a CDO with features in which we wanted to invest and we were open to working with Deutsche because they were willing to work under the structure we wanted to invest, under a fee structure that was comfortable, and they then brought us to State Street and created the Carina investment."

47. As DBSI SSG and the CDO Group continued to discuss the CDO Proposal, the DBSI CDO Group looked for a collateral manager willing to manage a CDO with the agreed upon structural features outlined by DBSI SSG and Magnetar.

48. In a May 16, 2006 e-mail, the DBSI SSG Managing Director informed a Managing Director of the CDO Group that he did not think Magnetar would have an issue with Blackrock acting as the collateral manager for the proposed CDO.

49. On June 1, 2006, a Magnetar Principal e-mailed a DBSI Managing Director of Structured Products Sales expressing his frustration that the proposed CDO structure had been altered based on Blackrock's potential involvement. In his e-mail, the Magnetar Principal stated in part: "I would like to go over the asset mix and liabilities again. I just don't understand the structure, we showed you Orion, would like this deal to be like that and yet it remains very different. We should take Blackrock out of the discussion and just talk about how close we can get to the structure to where I would like it to be. If we reach mutual satisfaction on that point, then we can discuss if Blackrock is the right manager . . . ."

50. Given the frustration, a DBSI Director of CDO Structuring asked his associate to re-incorporate Magnetar's structural comments into the most recent proposal and surmised that "[t]he way we are probably going to go is create a deal that Magnetar likes and find another manager to do it . . . ."

51. On June 5, 2006, a DBSI Managing Director of Structured Products Sales e-mailed the Magnetar Principal the revised presentation outlining the CDO Proposal (the "Revised Presentation"). The Revised Presentation was based on the Orion 2006-1 term sheet that the DBSI SSG Managing Director e-mailed months earlier to the CDO Group.

52. DBSI's Head of Structured Products Sales e-mailed a Managing Director of the CDO Group and a Director of the CDO Structuring Group informing them that Magnetar was doing a one billion dollar CDO with Lehman Asset Management. The Head of Structured Products Sales also indicated that he had a conversation with a Magnetar Principal "about doing another deal with us quickly after the first one. [The Magnetar Principal] is open to it, but wants to see how the first one goes with us. This is likely obvious to you, but we should do this as quickly as possible in order to lock up a second deal . . . ."

53. In mid-June of 2006, DBSI's CDO Group reached an agreement with State Street for the firm to manage the proposed CDO.

ii. DBSI CDO Group's Role in Structuring and Underwriting Carina

54. DBSI's CDO Structuring Group, CDO Financial Modeling Group, CDO Syndication Group, CDO Trading & ABS Correlation Trading Group, and Structured Products Sales Group all had direct and active involvement in structuring and underwriting Carina.

55. DBSI's CDO Structuring Group and CDO Financial Modeling Group worked with DBSI SSG and Magnetar to refine structural aspects of Carina ranging from the target portfolio of assets for the CDO, to the order of cash flow and waterfall payments under a series of economic scenarios.

56. DBSI's CDO Syndication Group and CDO Trading & ABS Correlation Trading Group participated in the acquisition and warehousing of assets designated for inclusion in Carina.

57. As the relationship manager for Magnetar, DBSI's Structured Products Sales Group also participated in Carina's underwriting process by communicating on a regular basis with the various groups within DBSI.

iii. <u>DBSI CDO Group's Role in Marketing Carina to Investors</u>

58. Despite their full knowledge of DBSI SSG and Magnetar's CDO Proposal, DBSI's CDO Group actively marketed Carina to investors.

59. In fact, on numerous occasions, DBSI's CDO Group either conducted marketing calls or met with prospective investors for Carina. On one such occasion, at least four of DBSI's CDO structurers scheduled a meeting at State Street's Boston office with a prominent CDO investor from Germany interested in Carina. This German investor eventually invested approximately $150 million in various tranches of Carina.

60. As a part of DBSI's marketing efforts, the CDO Group also created or contributed to various sales and marketing materials (*e.g.*, term sheets, flipbooks, offering circulars, investor presentations, and other offering materials) used in meetings with actual or potential Carina investors.

61. In a 6 page draft of a Carina term sheet dated August 2006 ("Carina Term sheet"), DBSI and State Street provided detailed information relating to the structure, portfolio, and fees associated with Carina. However, nowhere in the Carina Term sheet did it disclose DBSI SSG's and Magnetar's role and involvement in the structure of Carina.

62. In a 57 page draft of a Carina investor presentation dated September 2006 ("Carina Investor Presentation"), DBSI and State Street touted State Street's CDO management team, its prior collateral management experience, its CDO investment philosophy, and its process for identifying, selecting, and surveilling CDO assets. However, despite containing over thirteen pages of risk factors associated with Carina, again not a single page of the Carina Investor Presentation disclosed DBSI SSG's and Magnetar's involvement in Carina's structuring.

63. Similarly, DBSI's final 296 Carina offering circular ("Carina Offering Circular"), designed for investors, also failed to disclose DBSI SSG's and Magnetar's involvement in Carina.

64. In fact, there is not a single reference in Carina's sales and marketing materials relating to conflicts of interest arising from DBSI SSG's and Magnetar's: (1) role as the sponsors of Carina; (2) their involvement regarding the size, structure, and portfolio of Carina; and (3) their communications between and among various sub-groups within the CDO Group concerning the structuring, modeling, marketing, and selling of Carina to investors. Nor did the sales and marketing materials disclose DBSI SSG's intention to purchase CDS protection referencing CDOs whose performance was expected to be similar to the performance of the CDOs in which DBSI SSG and Magnetar bought equity.

iv. <u>DBSI's CDO Group Enters into Separate Engagement Letters with State Street and Magnetar in Carina</u>

65. The CDO Group negotiated separate bilateral engagement letters with State Street and Magnetar.

66. On June 1, 2006, Magnetar's counsel ("Magnetar Counsel") e-mailed a DBSI Managing Director of Structured Products Sales, a Managing Director of the CDO Group, a Managing Director of DBSI SSG, an Associate of DBSI SSG, and a Magnetar Principal. In her e-mail, Magnetar's Counsel writes: "All, At the request of [Magnetar Principal] I am enclosing herewith an engagement letter and warehouse agreement. Please let me know if you have any questions . . . ."

67. On June 6, 2006, a DBSI Managing Director of Structured Products Sales forwarded Magnetar Counsel's e-mail to a Managing Director of the CDO Group and to a Director of CDO Structuring.

68. On June 7, 2006, employees of DBSI's CDO Structuring Group, CDO Financial Modeling Group, and CDO Syndication Group exchanged e-mails regarding certain conditions outlined in Magnetar's proposed engagement letter ("Engagement Letter").

69. On June 9, 2006, a DBSI Director of CDO Structuring e-mailed a DBSI SSG Managing Director and stated, in part: "I should have thought to update you before 6:30 p.m. on Friday. Sorry about that We've been proceeding down a parallel path with Magnetar on a $1.5-2 billion mezzanine ABS CDO similar to the Blackrock deal but with more aggressive portfolio with 50% Baa3, 20 bps sr mgmt fees all-in and 3 yr call . . . . Magnetar is pretty much signed up for the deal and we are in the process of reviewing an engagement letter they sent to us. We've arranged a meeting between Magnetar and State Street Global Advisors this monday at 9 am in Boston to interview them for the manager slot . . . ."

70. Also on June 9, 2006, DBSI's CDO Structuring Group circulated among its group State Street's version of the Engagement Letter ("State Street Engagement Letter"), which contained numerous comments and revisions. Included in the revisions were the names of State Street as the collateral manager and DBSI as the underwriter of the proposed CDO. The State Street Engagement Letter further contained signature lines for representatives of State Street, DBSI, and Magnetar.

71. Several days later, on June 13, 2006, a Vice President within DBSI's CDO Structuring Group e-mailed a different version of the Engagement Letter to two Directors of CDO Structuring, a Managing Director of the CDO Group, and a Managing Director of Structured Products Sales ("Magnetar Engagement Letter"). In his e-mail, the Vice President stated, in part: "[P]lease find attached for Magnetar's review our proposed changes to the engagement letter (shown in blackline). For the most part these are changes reflecting our intention to execute

bilateral agreements with Magnetar and separately with SSgA – bilateral vs. tri-party shouldn't affect Magnetar's rights or deviate from the terms of our business agreement. the warehouse agreement to follow."

72. On June 21, 2006, State Street and DBSI exchanged another draft of the State Street Engagement Letter and Warehouse Agreement containing additional revisions from each side. For the first time, all references in the State Street Engagement Letter to a "Mezz ABS CDO" were replaced with the name "Carina CDO Ltd." and DBSI or State Street removed Magnetar's signature line.

73. On June 27, 2006, a Magnetar Principal e-mailed a DBSI Managing Director of Structured Products Sales an executed version of the Magnetar Engagement Letter between Magnetar and DBSI.

74. Also on June 27, 2006, a senior managing director from State Street executed the State Street Engagement Letter between State Street and DBSI.

v. <u>DBSI's CDO Group Allows Magnetar to Name the Proposed CDO "Carina"</u>

75. On June 19, 2006, State Street's Head of Structured Products e-mailed a DBSI Director of CDO Structuring, stating: "I think [Magnetar Principal] would prefer to name [the CDO] after a constellation. [The Magnetar Head] sent us a list of constellations and we're still going through it. If you have any thoughts around the constellation theme, let me know."

76. Less than an hour later, the DBSI Director of CDO Structuring responded: "no problem – pls let me know once you have a name, if not we will use something generic such as 'SSgA ABS CDO Ltd.' thx."

77. Two days later, on June 21, 2006, State Street's Head of Structured Products sent a follow up e-mail to the DBSI Director of CDO Structuring informing him that: "We'd like to

name the deal Carina CDO Ltd. Carina is a constellation and the translation means Keel (of the ship Argo), so it fits the State Street nautical theme. Please let me know if this name works." DBSI's Director of CDO Structuring replies, "this is fine with us . . . ."

78. Several hours later, a Vice President in DBSI's CDO Structuring Group e-mailed an Investment Banking Officer within the CDO Structuring Group asking him to "put the name [Carina CDO] into the Magnetar letter when you have a chance. we are still awaiting comments from [Magnetar Principal] but just to be ready with execution docs because if they agree we are executing immediately."

vi. DBSI CDO Group's Knowledge of DBSI SSG's and Magnetar's Requests for Carina Trade Logs

79. On June 26, 2006, a DBSI Director of CDO Structuring e-mailed several colleagues within the CDO Structuring Group stating, in part: ". . . Minutes away from inking SSgA engagement letter . . . [and] awaiting re-draft of Magnetar engagement letter . . . SSgA probably going to do a BWIC today. Magnetar has asked that we send them list of credits ahead of time but that we don't need to wait for them to respond before we execute. [Magnetar] would also like on a daily basis a end-of-day trade log summarizing key terms of the CDS that are executed . . . ."

80. In a separate e-mail, the DBSI Director of CDO Structuring added: "Also, Magnetar will want an opportunity to buy protection (source) the ABS CDOs that are done synthetically for the deal[.]" After some brief confusion to his e-mail, Director of CDO Structuring clarified that: "If SSgA likes some paper, Magnetar would like first look so they have [the] opportunity to short it into the deal[.]" State Street's Head of Structured Products replied by forwarding the e-mail to the DBSI Director of CDO Structuring, saying: "Please call me this morning to discuss. We are not comfortable with [Magnetar] shorting into the deal . . . ."

81. Around the same time, on June 26, 2006, the DBSI Director of CDO Structuring e-mailed a Magnetar Principal, stating: "FYI, here is SSgA's first bid list that they are going to put out this afternoon." The Magnetar Principal responded minutes later: "Awesome!!"

82. The following morning, on June 27, 2006, the DBSI Director of CDO Structuring updated a DBSI SSG Managing Director and Associate on the "SSgA deal for Magnetar[.]" The DBSI SSG Managing Director responded: "Thanks . . . can you keep us posted on bid lists and portfolio as well….I think we're seeing most things, but it's usually through CDOs to [Managing Director of Structured Products Sales] to [Magnetar] to us. Thanks."

83. Also on June 27, 2006, State Street's Head of Structured Products sent an e-mail to a DBSI Director of CDO Structuring, stating: "[L]et's talk first thing about carina . . . if i'm going to put a cds list out for wednesday execution, i want to do it this morning." In response, Director of CDO Structuring replied: "[P]lease go ahead, as far as Magnetar and we are concerned, we are ready to go and really would appreciate getting started today. please let me know if you need to discuss anything before you put the list out . . . ."

84. On June 28, 2006, the DBSI Director of CDO Structuring e-mailed a Managing Director of the CDO Group, stating: "Spoke to [a DBSI SSG Managing Director.] Doesn't know whether or not he wants to participate in this deal . . . He said that Magnetar a little 'unhappy' that he seemed to have been cut out of the loop on this deal. I told him we would keep him in the loop going forward[.]" The Managing Director of CDO Structuring replied: "I wouldnt worry too much[.]

85. The next day, on June 29, 2006, the DBSI Director of CDO Structuring sent an anticipated bid list for Carina to both a Magnetar Principal and a Managing Director of DBSI SSG. In his e-mail, the Director of CDO Structuring stated: "FYI. SSgA will likely be putting

in for these bonds off some OWICs that went out this morning[.]" The Magnetar Principal responded: "Thanks, would like to get a trade log each nite, just basic stuff."

86. On July 7, 2006, the DBSI Director of CDO Structuring sent another anticipated bid list to the Magnetar Principal and the Managing Director of DBSI SSG, stating once again: "FYI. SSgA planning to go out with the bid list below on tuesday morning[.]"

vii. **DBSI CDO Group's Interactions with DBSI SSG and Magnetar Over the Structure and Composition of Carina**

87. DBSI's CDO Group had communications with DBSI SSG and Magnetar throughout Carina's development in an effort to refine Carina's structural characteristics consistent with the CDO structure agreed to with DBSI SSG and Magnetar in connection with their pre-commitment to invest in Carina's equity.

88. On July 11, 2006, a Managing Director of the CDO Group e-mailed several employees with an update on a CDO that Citigroup was marketing at the time. In his e-mail, the Managing Director stated, in part: ". . . a lot of mezz paper curious what will happen when this demand disappears no OC triggers at all it appears . . . as all of these deals are named after constellations they are clearly driven by the same equity in SSgA Carina . . . ." In response, a different Managing Director of the CDO Group wrote back that "[t]his is great color, thanks. The bright side is that not only will dealers allow paper into their warehouse but these deals will needs assets something fierce. Does our equity investor have sensitivity to having too many CDOs in the pool?" The Managing Director of the CDO Group replied, in part: ". . . the equity investor is open to taking this exposure in the deals . . . ."

89. DBSI's CDO Group e-mailed State Street's Head of Structured Products: "It appears that we have a good bit of competition in the creation of these mega – synthetic transactions with 'pre placed equity. Including ours I now count three trades with three different dealers/managers

($4.5 bill!!). Any idea how big this is going to get and whether the market for debt risks cannibalizing itself with these gigantic 'no IC/OC' tranches? Just curious what your thoughts were . . . ."

90. Also on July 11, 2006, an Investment Banking Officer in the CDO Group e-mailed Director of CDO Structuring asking if he should add the name of DBSI's relationship manager to Magnetar and Magnetar's contact information to the working group list for Carina. Director of CDO Structuring replied: "let's not add them[.]"

91. On July 12, 2006, a DBSI Director of CDO Structuring circulated an e-mail to his junior employees reminding them of a 12:00 p.m. call with Magnetar in which both sides were scheduled to discuss various modeling assumptions for Carina. The Director of CDO Structuring also sent an e-mail to DBSI SSG and Magnetar containing another anticipated bid list for Carina.

92. Less than fifteen minutes later, the DBSI Director of CDO Structuring e-mailed a Managing Director of the CDO Group with news that: "[the Magnetar Principal] asked about doing $2 billion deal. Told him I thought it was a great idea but let's see how the ramp on the first $1 billion of assets go and make the decision then . . . ."

93. On July 13, 2006, a DBSI SSG Managing Director e-mailed a Magnetar Principal, asking: "How do you feel about the level of interaction and information with [S]tate [S]treet? I'm not sure exactly what we should be getting, but I don't like that we are getting nothing." In response, the Magnetar Principal stated, in part: "I find [State Street's Head of Structured Products] to be a bit arrogant and unresponsive. You think I should just start calling him every day for an update? I'm very good friends with his boss' boss, so could just send a nice email to him asking for more interaction."

94. On July 14, 2006, the Magnetar Principal sent an e-mail to various individuals within DBSI's CDO Structuring Group and DBSI SSG asking if the CDO Group could structure Carina with no triggers for life, instead of no triggers for the first five years of the transaction. A DBSI Director of CDO Structuring responded that he would look into it and get back to the Magnetar Principal the following week.

95. Several days later, on July 17, 2006, the DBSI Director of CDO Structuring provided Magnetar and DBSI SSG with another anticipated bid list for Carina: "SSgA going out w another list tomorrow. $230 million notional[.]"

96. On July 24, 2006, the DBSI Director of CDO Structuring e-mailed Magnetar, a Managing Director of Structured Products Sales, a Managing Director of DBSI SSG, and an Associate of DBSI SSG a structural analysis of Carina with no triggers for life. After reviewing the structural analysis, the Magnetar Principal agreed to proceed with the original structure of no triggers for the first five years, and to hold off on further discussions about triggers until the next CDO deal.

97. On July 26, 2006, the DBSI SSG Associate noticed that State Street had purchased a BBB-rated small business loan for Carina, which was inconsistent with the CDO collateral eligibility criteria, and asked the Magnetar Principal if State Street consulted him on the purchase.

98. The Magnetar Principal indicated that State Street did not consult him prior to purchasing the small business loan, prompting the Magnetar Principal to e-mail DBSI's CDO Group: "We've noticed the $8MM is some kind of strange ABS. Can't have that just going in without pre-OK, I'll discuss with [State Street's Head of Structured Products] tomorrow. Anything that's not sub/mid-prime, we want to talk about first, CDO's, CMBS, prime, fixed rate and certainly

any whacky ABS types. I really would like to see list of planned trades at least contemporaneously please."

99. That night, the DBSI SSG Associate e-mailed his Managing Director and stated, in part: "I wanted [the Magnetar Principal] to give them some crap but perhaps 'strange' and 'wacky' may have been a bit much . . . If [State Street] is going to be inflexible w our requests, they should have at least run this by us . . . ."

100. In response, the DBSI SSG Managing Director replied: "I agree with you that [the Magnetar Principal's] e-mail is going to sound also wacky to the cdo group's ears, but I think it reinforces that this is not just sponsoring a cdo, but really a. highly structured separate account mandate. I think [DBSI's CDO Group] and [State Street] may be bothered by that, but it is the nature of the arrangement, and with the other deals, we definitely have that interaction."

101. On July 27, 2006, a DBSI Director of CDO Structuring apologized to the Magnetar Principal: "My fault on this . . . I thought I had forwarded to you pretrade . . . ."

102. Hours later, the DBSI Director of CDO Structuring sent another e-mail to the Magnetar Principal providing further assurances regarding the $8 million small business loan: ". . . [S]orry about the trade issue. [State Street] did ask if it was ok and i thought i had sent it thru to you but at this point looking at my sent messages confirm that i neglected to do so since you are already having regular direct dialog with them, perhaps we can have the [State Street] guys cc: you on pretrade clearance requests they are sending to our warehouse guardians . . . if you don't have issue with it i'll ask [State Street] to start doing this we'd love to have you in to meet the group and the team working on the deal, walk you thru modeling, strategy, etc."

103. The Magnetar Principal then confirmed to the DBSI Director of CDO Structuring that he would ". . . prefer to be directly in the loop, thanks."

104. On August 1, 2006, the DBSI Director of CDO Structuring e-mailed a Managing Director of the CDO Trading & ABS Correlation Trading Group, a Managing Director of the CDO Group, and several DBSI CDO structurers: "FYI. SSgA wants to do a BWIC of the following CDOs. Should we check with Magnetar to see if they want us to intermediate any of these trades for them into the deal (ie, we bid for them at the BWIC)[?]"

105. On August 1, 2006, an Investment Banking Officer from DBSI's CDO Group provided Magnetar, DBSI SSG, and a Managing Director of Structured Products Sales with Carina's latest trade blotter and warehouse information. The DBSI SSG Managing Director wrote to Magnetar that the CDO Group was providing them with the best real time information of anyone and that the underwriters involved in their other CDO deals should do it as well.

106. The Magnetar Principal responded to the DBSI SSG Managing Director: "Very impressive. Think another deal in order. Pyxis 2?"

107. Later that afternoon, State Street's Head of Structured Products sent out an e-mail to DBSI's CDO Group informing them that State Street was interested in selling protection on ten mezzanine tranches from Carina. The Magnetar Principal responded that he would "buy the protection on the four 06 deals at best bid +5bp . . . ."

108. An hour later, a Managing Director of the CDO Trading & ABS Correlation Trading Group asked the Magnetar Principal how much he would let the Managing Director make to intermediate the sale of protection to Magnetar. Both agreed to a ten basis point intermediation fee with five going to the CDO Trading & ABS Correlation Trading Group and five going to State Street.

109. The Magnetar Principal forwarded his e-mail with the Managing Director of the CDO Trading & ABS Correlation Trading Group to the DBSI SSG Managing Director stating, in part: ". . . Told him 5 instead of usual 3, want to reward for good behavior."

viii. <u>DBSI CDO Group's Active Role in Marketing Carina Despite Its Knowledge of the DBSI SSG's and Magnetar's CDO Proposal</u>

110. On August 14, 2006, a DBSI Director of CDO Structuring e-mailed his colleagues about a prominent CDO investor's request to meet some of DBSI's CDO structurers at State Street's Boston office to discuss Carina. Over the next several days, DBSI's CDO Structuring Group exchanged a series of e-mails discussing which areas of Carina's structure to cover with the prospective investor.

111. On August 22, 2006, DBSI's Director of CDO Structuring and several junior CDO structurers scheduled a marketing call with another potential investor in Carina.

112. On August 24, 2006, a Magnetar Principal e-mailed State Street's Head of Structured Products asking about "the plan of action" for the BB rated assets for Carina. After receiving a response from State Street, the Magnetar Principal replied: "Makes sense. On new deals, you should let me know and I'll put in for bonds too, maybe we can get a bit more that way . . . ."

113. Several days later, on August 29, 2006, DBSI's Europe & Asia CDO Group e-mailed the CDO Structuring Group: "We have been working on pushing this transaction to our traditional debt buyers: Singapore: UOB AM, Lion, STAM; Taiwan: CUB, Chang Hwa Bank, Korea: Meritz, NACF, etc. Will we have a pitchbook on this deal pls? I think information on the explanation on the absence of OC/IC tests for the first 5 years would be useful . . . ."

114. In response, a DBSI Director of CDO Structuring e-mailed someone else in the CDO Group, asking: "How do we want to respond to this?" Another Director of CDO Structuring responded: "What's [Magnetar Principal's] cell number?"

115. On September 9, 2006, a vice president from DBSI's CDO Structuring Group sent a follow up e-mail to its Europe & Asia Group stating that the CDO Group would soon launch its debt marketing campaign for Carina, which he described as a reverse inquiry pre-placed equity CDO. The vice president further stated that the CDO Group still had some of the "yielder part of the capital structure" available if any of their Asia clients were interested.

116. Two days later, on September 11, 2006, a vice president from DBSI's CDO Syndication Group provided some other sub-groups within the CDO Group with the names of six different investors who were interested in Carina.

117. On September 14, 2006, DBSI's CDO Group identified a seventh potential investor for Carina.

118. On September 15, 2006, a Magnetar Principal contacted a DBSI Director of CDO Structuring regarding the length of Carina's reinvestment period. After exchanging several e-mails, the Director of CDO Structuring stated, in part: "Bottom line I want you to be satisfied that we are doing a deal you want to do. Before we go out with next deal we will run structural comparisons to show you the full menu of options[.] We can replicate any deal on the street or we can do our style of deal[.]"

119. Several days later, on September 19, 2006, a vice president within the CDO Syndication Group updated the larger CDO Group that she had: ". . . wood to chop tomorrow on this deal . . Will provide a daily update via email. I am speaking in the morning meeting tomorrow am and will push this deal . . . ." The vice president also noted that one investor had expressed interest in investing in Carina was "looking but could be out. Will get more feedback tomorrow. They do

not like Magnetar shorts the BBBs," to which another DBSI employee responded: "Why does [prospective investor] know that Magnetar is shorting BBBs?"[5]

120. On September 20, 2006, a DBSI SSG Managing Director sent a Director of CDO Structuring an e-mail requesting additional changes to Carina's structure. The Director of CDO Structuring forwarded this e-mail to his team of CDO structurers involved in Carina.

121. Five days later, on September 25, 2006, the DBSI Director of CDO Structuring sent another e-mail to his team of CDO structurers stating, in part: "Let's make carina investor requests a top priority pls. If there is something prioritized ahead of these pls speak to me first so I can sort it out. We need to price this deal on Friday . . . ."

122. On September 29, 2006, a Managing Director of Structured Products Sales e-mailed at least three individuals at Magnetar. In his e-mail, the Managing Director wrote: "Please see the pricing below on Carina transaction . . . We look forward to Carina II, Vertical, and hopefully Smith Breeden . . . It's great to get our first deal together printed. We look forward to many more. Have a great weekend."

123. In response, a Magnetar Principal stated: "Looks like good execution, Baa3 a little wide but they're small. Everything else great! Appreciate all the work you put in on this first deal, looking forward to building on that with the deals ahead . . . ."

124. On October 2, 2006, an Associate from DBSI's Securitized Products Group e-mailed the Managing Director of the CDO Trading & ABS Correlation Trading Group asking "do you want to buy protection on 15mm of the virgo baa2 at 5 back of pricing? This would be for carina."

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[5] A month before this e-mail, an article appeared in Derivatives Week entitled "Ill. Fund Swallows Big Chunk of Synthetic ABS." The article reported that "Magnetar . . . has enlisted a clutch of Wall Street firms to structure deals in which it buys an equity slice" and that "[m]arket participants speculate the fund is shorting other parts of the capital structure against its long equity positions." The article noted that "[a]mong the fund's deals . . . Deutsche Bank and State Street Global Advisors are marketing a USD 1.5 billion deal called Carina . . . ."

The Managing Director responded: "INDEED WE DO....CONSIDER THAT DONE . . . GLAD WE WORKING TOGETHER ON THIS ONE[.]" (Emphasis in original).

125. On October 30, 2006, a DBSI SSG Associate confirmed to another DBSI employee that 25% of Magnetar's $75 million equity investment in Carina should be allocated to DBSI SSG.

126. Less than a year later, Carina experienced an event of default and was forced into liquidation, resulting in losses to investors.

VIII. <u>VIOLATIONS OF THE MASSACHUSETTS UNIFORM SECURITIES ACT</u>

A. <u>Count 1: Violation of Section 204(a)(2)(G)</u>

127. Section 204 of the Act provides, in pertinent part:

> (a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:— (G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business . . . .

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

128. The conduct of Respondent, as described above, constitutes a violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

129. The Regulations at 950 MASS. CODE REGS. 12.204(1), entitled <u>Dishonest and Unethical Practices in the Securities Business</u>, provides in pertinent part:

> (a) <u>Broker-dealers</u>. Each broker-dealer shall observe high standards of commercial honor and just and equitable principals of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension, or revocation of a registration, or such other appropriate action:
>
> . . .

> 18. Making any advertising or sales presentation, either in writing or oral form, in such a fashion as to be deceptive or misleading . . . .

950 MASS. CODE REGS. 12.204(1)(a)(18).

B. <u>Count 2: Violation of Section 204(a)(2)(J)</u>

130. Section 204 of the Act provides, in pertinent part:

> (a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:— (J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter . . . .

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

131. The conduct of Respondent, as described above, constitutes a violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

IX. ORDER

DBSI consents to the entry of this Order,

IT IS HEREBY ORDERED:

DBSI, in full settlement of these matters, and solely for the purpose of resolution of the allegations of fact and violations of law in the Offer, and admitting to the Statements of Fact as set forth in Section VII, but neither admitting nor denying the Summary and Violations of Law set out in Sections II and VIII herein, makes the following representations and agrees to the undertakings as part of the Order:

A. DBSI agrees to permanently cease and desist from conduct in violation of the Act and Regulations in the Commonwealth;

B. DBSI agrees to be censured by the Division;

C. Within fourteen (14) business days of the entry of the signed Order, DBSI shall pay a civil administrative penalty in the amount of $17,500,000.00 million to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashiers check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, MA 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies DBSI making the payment and the docket number of the proceedings;

D. For good cause shown, the Division's staff may extend any of the procedural dates set forth above;

E. DBSI agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to, any payments made pursuant to any insurance policy, with regard to all amounts that DBSI shall pay to the Division as a civil administrative penalty pursuant to the Division's Order;

F. DBSI further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that DBSI shall pay to the Division as a civil administrative fine;

G. DBSI agrees that, upon issuance of an Order by the Division that contains the terms as set forth above, if it fails to comply with any of the terms set forth in the Division's Order, the Enforcement Section may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order, after a fair hearing, the Enforcement Section may re-institute the actions and investigations that had been brought against DBSI.

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

By: ________________________
Bryan J. Lantagne
Director
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

March 13, 2013